

MATTER OF YEE

In Deportation Proceedings

A-11468455

Decided by Board November 8, 1971

- (1) While a determination as to the commission of the substantive offense of adultery is dependent upon the law of the state in which the act occurred, local peculiarities of criminal procedure are not determinative. Hence, notwithstanding the law of Iowa (the State in which the acts took place) does not provide for a criminal conviction for adultery unless the spouse prosecutes and respondent's wife elected not to prosecute him, the conduct of respondent, who fathered two illegitimate children by a single girl while legally married to another woman, constitutes adultery. Therefore, he is precluded by the provisions of section 101(f) (2) of the Immigration and Nationality Act from a finding of good moral character during the requisite period for the purpose of establishing statutory eligibility for suspension of deportation [*Wadman v. INS*, 329 F.2d 812 (C.A. 9, 1964), distinguished; in the instant case, respondent was not separated from his wife during the period in which he engaged in the adulterous acts].
- (2) Respondent, who entered the United States as a nonimmigrant student and who is charged with deportability under section 241(a) (9) of the Act in that after entry he failed to comply with the conditions of his nonimmigrant status, is ineligible for the benefits of section 241(f) of the Act. [*Lee Fook Chuey v. INS*, 439 F.2d 244 (C.A. 9, 1971), does not govern outside that circuit; until the matter has been definitively resolved, the opinion of the Attorney General in *Matter of Lee*, Int. Dec. No. 1960 (1969), will be followed.]

CHARGE:

Order: Act of 1952—Section 241(a) (9) [8 U.S.C. 1251(a) (9)]—Nonimmigrant—failed to comply with conditions of status.

ON BEHALF OF RESPONDENT:
Walter W. Rothschild, Esquire
227A East Fifth Street
Waterloo, Iowa 50703

ON BEHALF OF SERVICE:
Irving A. Appleman
Appellate Trial Attorney

The special inquiry officer, in his decision dated December 18, 1970, found the respondent deportable as charged, denied his application for suspension of deportation under section 244 of the